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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91237315
Party	Plaintiff American Marriage Ministries
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Date	12/11/2020
Attachments	54080174 Motion.pdf(25367 bytes )

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

) Opposition No. 91237315
OPPOSER'S MOTION TO STRIKE APPLICANT'S OVERLENGTH REPLY  O O O

Opposer American Marriage Ministries moves the Board to strike Applicant's overlength and late Reply (58 TTABVUE 1-18) submitted in response to Opposer's Response to Applicant's Motion to Order Service of Depositions, Extend Applicant's Trial Period, and Strike Opposer's Notice of Reliance (56 TTABVUE 2-12). Even as Applicant raises brand-new arguments in its Reply alleging defects with Opposer's various trial submissions, Applicant's Reply itself fails to comply with the Trademark Rules.

Trademark Rule 2.127(a) plainly states that "[t]he time for filing a reply brief will not be extended" and that "[a] reply brief shall not exceed ten pages in length in its entirety." 37 C.F.R.

FG:54080174.1

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Applicant's Reply, for instance, tries to incorporate by reference its previously-raised evidentiary objections to some of Opposer's evidence. *See* 58 TTABVUE 9 (referencing its arguments previously submitted to the Board regarding the admissibility of certain evidence submitted with summary judgment briefing). But these evidentiary objections were not raised in Applicant's Motion to Strike, *see* 46 TTABVUE 11-12 (noting only that some evidence was stricken at the summary judgment stage), and cannot be raised on reply. *Grote Industries, Inc. v. Truck-Lite Co., LLC*, 126 U.S.P.Q.2d 1197, 1199 (T.T.A.B. 2018) ("Objections raised for the first time in a reply brief are untimely because they effectively foreclose the adverse party from responding to the objections.").

<sup>&</sup>lt;sup>2</sup> See Saint-Gobain Corp. v. Minn. Mining & Manufacturing Co., 66 U.S.P.Q.2d 1220, 2003 WL 476503 at \*1 (T.T.A.B. 2003) (noting that "extensions of time to file reply briefs with

§ 2.127(a). Applicant's brief, at twelve pages, plainly exceeds this limit. See 58 TTABVUE 2-13.

Board precedent clearly demonstrates that reply briefs submitted in violation of the Board's rule

on page limits are not entitled to consideration. See, e.g., Saint-Gobain Corp. v. Minn. Mining &

Manufacturing Co., 66 U.S.P.Q.2d 1220, 2003 WL 476503 at \*3-\*4 (T.T.A.B. 2003) ("[T]he

page limitation for briefs on motions is for the convenience of the Board and is intended to

prevent the filing of unduly long briefs. This limitation cannot be waived by action, inaction or

consent of the parties. . . . Accordingly, [briefs submitted] in violation of Board rules regarding

page limitations . . . will receive no consideration."); Theatrical Stage Employees Union Local

No. 2 of the Int'l All. of Theatrical Stage Employees & Moving Picture Technicians, Artists &

Allied Crafts of the United States & Canada, Cancellation No. 9205524, 2013 WL 11247717, at

\*1 (T.T.A.B. Nov. 1, 2013) (declining to consider an eleven-page reply brief); see also Club

Amenities, LLC Pettenon Cosmetici Snc, Cancellation No. 9204317, 2005 WL 2034549, at \*2

(Aug. 18, 2005) (non-precedential decision citing Saint Gobain Corp. and explaining that the

Board will not "dissect a party's brief to bring it within the allowable page limit"). The Board

should follow this precedent and decline to consider Applicant's Reply.

If the Board nevertheless decides to consider Applicant's Reply, the Board should also

consider the fact that Applicant has co-counsel who has appeared in this case, see 27 TTABVUE

2, when evaluating Applicant's newly proffered excuses for failing to timely raise its objection to

Opposer's Notice of Reliance.

Dated: December 11, 2020

/Nancy V. Stephens/

Nancy V. Stephens WSBA No. 31510

regard to motions in *inter partes* proceedings before the Board are expressly prohibited" even where the non-moving party consents to movant's requested extension).

OPPOSER'S MOTION TO STRIKE APPLICANT'S OVERLENGTH REPLY - 2

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## **CERTIFICATE OF SERVICE**

I hereby certify that on December 11, 2020, I served the foregoing Opposer's Motion to Strike Applicant's Overlength Reply by emailing to Applicant as follows:

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/Nancy V. Stephens/ Nancy V. Stephens